

*United States Court of Appeals
for the Second Circuit*



APPENDIX

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75-1035

To be argued by
DAVID V. KEEGAN

United States Court of Appeals
For the Second Circuit

Docket No. 75-1035

UNITED STATES OF AMERICA,

Appellee,

—v—

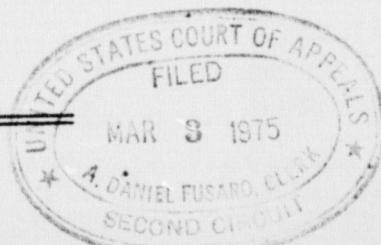
FRANK ELIANO,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX TO APPELLANT'S BRIEF

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of counsel



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JUDGE TYLER

74 CRIM. 263

TITLE OF CASE

THE UNITED STATES

vs.

FRANK ELLIOTT

ATTORNEYS

For U. S.:

Charles E. Padgett, AUSA

264-3990

ONLY COPY AVAILABLE

1-17-75

For Defendant:

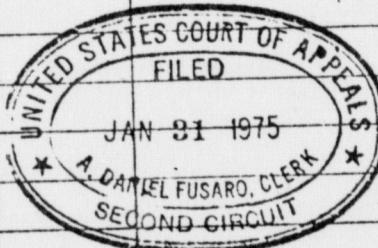
Kenneth Kaplan

919 Third Ave.

New York, N.Y. 10022

tele: 688-0147

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(03)					
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Costs, 26					
Witnesses, 7201 & 7203					
Income tax evasion (Cts1-3)					
Failure to file income tax					
return. (Ct4)					
(Four Counts)					



DATE	PROCEEDINGS
3-18-74	Filed indictment ordered sealed. B/W ordered. Motley, J.
3-19-74	Indictment ordered unsealed and resealed. Motley, J.
4-27-74	Indictment ordered unsealed. Motley, J.
4-8-74	Adj. to 4-22-74. Tenney, I.
4-22-74	No appearance (Court directs entry of not guilty plea. Case assigned to Judge Tyler for all purposes. Pierce, J.
5/3/74	Deft. produced on warrant (Wty. present) left pleads not guilty. Case referred to Tyler, J. 10 days for motions. All fines to be paid in full. Case remanded in light

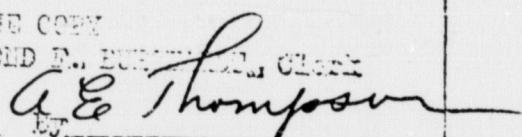
DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
10/15/74	Deft. (atty, present) application for reduction of bail denied. Deft. directed to surrender his passport to U.S. Atty. by 10/18/74 at 12 noon. Tyler, J.		
10/17/74	Filed notice of appearance by atty.		
10/23/74	Filed deft.'s notice of motion for bill of particulars and for discovery and inspection.		
11/7/74	Filed Govt.'s notice of readiness for trial.		
11/19/74	Filed memo-end. on motion dated 10/23/74. Motion disposed of by agreement of counsel and in accordance with the rulings of the undersigned respecting items or paragraphs 2 and 3(c) placed on the record at the hearing today. Tyler, J. mn		
11/22/74	Filed deft.'s notice of motion re: discovery. ret: 11/22/74		
11/25/74	Filed memo-end. on motion-(affdvt. of Govt. in support) ... motion to quash the subpoena duces tecum served by on on behalf of deft. upon the I.R.S. is granted in all respects. Tyler, J. mn		
11/25/74	Filed Govt.'s memo. of law in support of motion to quash a subpoena.		
12/6/74	Filed Govt.'s pre-trial memo. of law.		
12/5/74	Filed Govt.'s request to charge.		
12/7/74	Deft. Frank Eliano- (atty present) trial begun with a jury as to each of counts 1,2,3,4.		
12/7/74	Trial cont'd.		
12/7/74	Trial cont'd.		
12/7/74	Trial cont'd. & concluded. Deft's motion for acquittal denied. Deft. found guilty al counts 1,2,3, 4. Deft. remanded. Sentence set for 1/10/75. Tyler, J.		
	Filed transcript of record of proceedings dated 10/23/74 to 12/7/74.		

COURT RECORDS

TO	PROCEEDINGS	Date Order Judgment N
0/75	Filed JUDGMENT (atty. present) deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of THREE (3) YEARS on each of counts 1,2 and 3 to be served concurrently with each other. SIX (6) MONTHS on count 4 is to run consecutively of counts 1,2 & 3. It is furthered ordered that the deft. be examined to determine if a medical problem exists and undergo psychiatric consultations if deemed necessary. Tyler, J. issued all copies.	
/75	Filed deft.'s notice of appeal from judgment of conviction of 1/10/75. mailed copies.	
1/31/75	Filed stipulation designating exhibits to be transmitted to the U.S.C.A.	

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RAYMOND E. BURKHARD, Clerk


Deputy Clerk

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2 what do you want to do? We can call a panel up right away
3 or whatever you say.

4 MR. KAPLAN: May I have a moment, your Honor?

5 THE COURT: Sure.

6 (Pause.)

7 MR. KAPLAN: Your Honor, I think we will go to
8 trial.

9 THE COURT: All right.

10 MR. PADGETT: Your Honor, on the government's
11 direct case I intend to introduce evidence that the
12 defendant in 1971 pleaded -- excuse me, 1972 -- pleaded guilty
13 to promoting prostitution in the second degree, a Class E
14 felony under State law. I thought we might settle this
15 now because doubtless there would be some objections to that
16 testimony should I offer it.

17 It is my intention to offer, through the
18 reporter who took the plea, who took the minutes of the plea,
19 the defendant's statement that he pled guilty and he was
20 guilty to particular acts.

21 THE COURT: Well, does the defendant object to
22 that?

23 MR. KAPLAN: Yes, your Honor, most
24 strenuously.

25 THE COURT: I'm not going to rule on this now.

1 DPP:

6

2 although I clearly see relevance in the context of this
3 case, but I'm going to wait until I hear a little bit of the
4 government's proof before ruling on that. In my judgment
5 it's completely relevant; there's no doubt of that. However,
6 it seems to me under prevailing doctrine the Judge always
7 has to worry about the prejudicial effect and then has to
8 balance the problem as against the cogency of the proof from
9 a relevant point of proof in the case itself. I don't
10 see how I can responsibly do that until I have heard a
11 little bit of the government's proof.

12 MR. PADGETT: I understand, your Honor. I
13 thought perhaps we could anticipate it.

14 THE COURT: Thanks for bringing it up. I
15 suggest we go ahead and hear some witnesses and then
16 I will be in a better position to evaluate your offer and
17 the defendant's objections.

18 MR. PADGETT: Very well, your Honor, thank you.

19 (Pause.)

20 THE COURT: Gentlemen, we are out of jurors and
21 there will be no less than a 30-minute delay. I'm sorry
22 to say. I know it the minute I bent my way into this
23 building early this morning. I could tell. 90 percent of
24 the populous of this great city were dissimated by this
25 kooky weatherman scared to death. The populous sits

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2 (Witness excused.)

3 MR. PADGETT: The Government calls Arlyne Segal.

4 A R L Y N E S E G A L , called as a witness by the
5 Government, being first duly sworn, testified
6 as follows:

7 MR. KAPLAN: Your Honor, may we approach the
8 side bar before the witness testifies?

9 THE COURT: There is no need to approach the
10 side bar. I think you are entitled to know who the
11 witness is.

12 DIRECT EXAMINATION

13 BY MR. PADGETT:

14 Q Miss Segal, what is your occupation?

15 A I am a court reporter.

16 Q For which court?

17 A For the New York State Supreme Court, Criminal Term.

18 Q Were you so employed in June of 1972?

19 A Yes, I was.

20 MR. KAPLAN: I would like to get to the side bar.

21 THE COURT: You said you are a court reporter
22 for the Supreme Court of New York?

23 THE WITNESS: Right.

24 THE COURT: New York County?

25 THE WITNESS: Right.

1 lzkm

Segal-direct

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2 THE COURT: Now, Mr. Padgett, I think I have
3 divined what the problem is, at least an outline. Would
4 you mind coming up with Mr. Kaplan.

5 Forgive us, ladies and gentlemen, and Miss Segal,
6 for the moment.

7 (At the side bar)

8 THE COURT: Now, I am taken aback. I thought
9 that from what you told me last evening that you weren't
10 going to have any more witnesses except three; did you
11 include Miss Segal?

12 MR. PADGETT: At that point, your Honor, I did
13 not expect to call Sandra Marchand to the stand today.

14 THE COURT: In any event, Mrs. Segal, I take
15 it, is here to identify some court recording?

16 MR. PADGETT: Miss Segal was the court reporter
17 who took the stenographic minutes of the plea entered by
18 Mr. Eliano in New York State Supreme Court. And I would
19 offer her stenographic minutes, actually her testimony as
20 to the stenographic minutes concerning Mr. Eliano's
21 admission against penal interest in that he admitted
22 the crime of promoting prostitution in the second degree.

23 MR. KAPLAN: Your Honor, the defendant --

24 THE COURT: Just a moment. When did this
25 happen and for what period of time?

1 | **1zkm**

Segal-direct

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2 MR. PADGETT: This happened in June, the
3 admission was on June -- excuse me, May 31, 1972, and it
4 concerned his admission that during the years 1967 through
5 1970 he coerced and promoted prostitution of Sandra
6 Marchand and Frances Bak.

7 MR. KAPLAN: Your Honor, the defendant is not
8 taking the stand. Obviously his character is being brought
9 in issue without his testifying.

10 THE COURT: His character, in a sense, is very
11 much in issue because of the nature of the Government's
12 proof heretofore.

20 THE COURT: So that the record is abundantly
21 clear, I take it that all you intend to do is offer what
22 he said on his plea?

23 MR. PADGETT: That is correct, your Honor.

24 THE COURT: And there is not going to be any
25 talk about sentence or any of that?

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Segal-direct

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2 MR. PADGETT: Certainly not, your Honor. I
3 believe the witness's testimony will be to the effect
4 Mr. Eliano, how do you plead to the second count of the
5 indictment charging the promoting of prostitution in the
6 degree of a Class E felony. Guilty.

7 THE COURT: I am sure I am not very much
8 interested in that. If it is going to be a stereotype
9 business thing, it won't state what he is admitting.

10 MR. PADGETT: He is admitting that he pleaded
11 guilty to promoting prostitution in the second degree
12 under a particular count of an indictment, which I would
13 then offer in evidence through the Clerk of the Court of
14 the New York State Supreme Court, and that indictment or
15 that count of the indictment ~~regales~~ how he promoted the
16 prostitution of Sandra Marchand and Frances Bak. One count
17 in a 52 count --

18 THE COURT: May I see this indictment?

19 MR. PADGETT: Unfortunately, we are getting the
20 Clerk over here now.

21 MR. KAPLAN: Your Honor --

22 THE COURT: Just a moment, please.

23 Getting anything out of you two is like pulling
24 teeth. Let's go back. You don't even have the indictment?
25 How can I make these marvelous rulings you always require

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Segal-direct

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2 unless you can tell me what is afoot here. I want to
3 see the indictment.

4 MR. PADGETT: Your Honor, I have been trying
5 since nine o'clock this morning to get a clerk from the
6 Supreme Court over here; and I can't get him.

7 THE COURT: Do you have other witnesses?

8 MR. PADGETT: Yes, I can put other witnesses on
9 the stand.

10 THE COURT: This trial has dragged all day. It
11 is incredible. It hasn't been your fault, I must admit.

12 MR. KAPLAN: Apropos to the admonition your
13 Honor gave me, did your Honor believe that the cross I
14 attempted was of the nature, the way you described it,
15 Judge, you thought the cross examination of Sandra was
16 done merely to extend time or to prolong the trial?

17 THE COURT: These long delays, you would stand
18 up and say nothing.

19 MR. KAPLAN: Judge, in answer to that, I have
20 a load of papers in front of me. I can only try to
21 introduce an exhibit --

22 THE COURT: It is not my purpose to blame you.
23 It is my purpose to keep a trial moving. One of the
24 legitimate complaints the lay public has about our
25 profession is our dilatory performance in the courts.

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2 approach the bench with counsel and the reporter? I
3 think I can speed matters up.

4 THE COURT: All right.

5 (At the side bar.)

6 MR. PADGETT: Your Honor, I have a xerox copy
7 of the indictment now. Obviously it is not the original.
8 It was in my files and pending the arrival of the clerk
9 from the New York State Supreme Court, I would ask the
10 Court to examine that.

11 THE COURT: Let me ask you something, Mr. Padgett.
12 You have tried these cases before. Have you ever been
13 able to use this sort of evidence at one of those other
14 cases?

15 MR. PADGETT: The situation hasn't arisen before,
16 your Honor.

17 THE COURT: Have you got any case law in support
18 of this?

19 MR. PADGETT: Not at this time, your Honor. I
20 would be glad to do the research which your Honor desires.

21 THE COURT: It seems to me if this is so
22 important, somebody should have been giving this careful
23 thought. When I put you off the other day, I recognized
24 that because of the peculiar nature of it, of this case,
25 that it may well be admissible, but I would think,

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2 particularly since you are the acknowledged expert, the
3 least you could have done was to help the Court out. I
4 don't understand. You know the usual rule.

5 MR. PADGETT: I have, your Honor. I have done
6 some preliminary research on this and it appears that the
7 decision is really whether or not the prejudicial value
8 of the information contained in the witness' testimony
9 outweighs the probative value.

10 THE COURT: I think that is probably so, but on
11 the other hand, I was just curious, and I think I have a
12 right to be curious enough to ask for any help that the
13 moving party for such evidence can give.

14 MR. PADGETT: My initial research indicated that
15 such evidence has been used in extortion cases, and cases
16 of that nature. There has never been --

17 THE COURT: I suggest that any case you can give
18 me, it doesn't have to be a brief, just give me a citation.
19 But I think perhaps I should have spelled it out the other
20 day when you arose and raised this even before we picked
21 the jury, I probably should have spelled it out. That
22 seems to be necessary these days. I always thought that
23 a Judge didn't have to ask counsel specifically for
24 everything. I would really appreciate a case on this
25 analogous to it.

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2 MR. PADGETT: I do have some analogous cases,
3 not in this particular area, but not with this type of
4 prior background. Unfortunately I don't have them here
5 in court. They are in my office.

6 MR. KAPLAN: Your Honor, anyone walking in this
7 courtroom will think there is a prostitution case being
8 tried here. I hear very little about money and taxes,
9 and a lot about what a pimp he is. If this is permitted --

10 THE COURT: All right, Mr. Kaplan.

11 Is it the 4th count that you want to get into?

12 MR. PADGETT: I believe it is the 2nd count.

13 Under the 2nd count of the indictment.

14 THE COURT: I don't see any 2nd count. I think
15 you better get your witnesses in here and forget this.
16 This seems to be -- the indictment doesn't seem to have
17 a 2nd count. You have an incomplete copy. Why don't you
18 go ahead with the witnesses other than this.

19 MR. PADGETT: Your Honor, might I suggest this
20 is an opportune time to take about a five minute break.
21 I am not trying to delay proceedings, but I would like
22 an opportunity to make a couple phone calls now to see if
23 I can get some witnesses here which might allow us to end
24 this today.

25 THE COURT: Wait a minute. You say you don't

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2 UNITED STATES OF AMERICA

3 vs.

74 Cr 267

4 FRANK ELIANO

5 December 5, 1974
6 10 a.m.

7 (Trial resumed.)

8 (In the robing room.)

9 THE COURT: Two of our jurors are not here yet.
10 They are still missing, and I thought we ought to use this
11 time to go into something.

12 You are going to dig me out a case, Mr. Padgett?

13 MR. PADGETT: Yes, your Honor, I have a number
14 of cases, if I can bring them in. I have the books here,
15 in fact.

16 THE COURT: Oh, good.

17 MR. PADGETT: Your Honor, as I suspected, there
18 were no cases directly on point. However, I was able to
19 find one case in another Circuit where the prior conviction
20 of a brothel keeper was admitted into evidence. Admittedly
21 on a different type of income tax case, a net worth case,
22 but that was the Williams case in 355 Fed. 2d, which is
23 here. Within this Circuit, however, there are a number
24 of cases including the Knoll case, at 379 Fed. 2d, --

25 THE COURT: Wait a minute. Hold on. Is that

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2 the case of Larry Knoll?

3 MR. PADGETT: I believe so, your Honor.

4 U. S. vs. Light --

5 THE COURT: Hold on. Wait a minute.

6 What is this Knoll case, 365?

7 MR. PADGETT: 379. I don't have that volume.

8 I have the Light case, a more recent case, which cites
9 Knoll. 394 Fed. 2d, 912.

10 THE COURT: Just a minute here.

11 I don't see anything in Light that seems to be
12 in point here.13 MR. PADGETT: There's nothing immediately on point
14 in any case I could find. The case I have indicated to
15 the Court and the others I have here I believe stand for
16 the general proposition that evidence of prior crimes may
17 be admissible to show certain points in the Government's
18 direct case, even though they may be different crimes.19 In one case we have a gambling conviction being admitted
20 in an income tax evasion case. When the monies generated,
21 which were the subject of the income tax case, were
22 generated through the man's gambling activities for which
23 he had been convicted.24 THE COURT: Wait a minute. Wait a minute. What
25 is throwing me off, you keep talking about how Light refers

1 dhkm

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2 to Knoll. What you are talking about really is what I
3 call the Bozza rule.

4 MR. PADGETT: Yes, your Honor. That is 365
5 Fed. 2d, which I have here.

6 THE COURT: I am sorry, you threw me off, or I
7 misunderstood perhaps when you kept referring to United
8 States vs. Knoll. You are relying on the Bozza rule.
9 That, I think, is generally the rule which is applicable
10 here, or certainly you are contending it is.

11 MR. PADGETT: Not only Bozza, your Honor, but
12 Guidarelli, at 316 Fed. 2d, 523, which is the gambling
13 and income tax evasion case I referred to.

14 THE COURT: Have you got that right there?

15 MR. PADGETT: Yes, your Honor.

16 THE COURT: Now, perhaps we didn't give you a
17 sufficient chance at the side bar when we discussed this
18 yesterday, Mr. Kaplan, but do you mind reciting the basis
19 of your objection again before I make up my mind here?

20 MR. KAPLAN: Yes, your Honor. The defendant
21 will not testify in his own behalf. Therefore, I believe
22 by permitting the plea on a prior crime in 1972 conviction,
23 would be in derogation of all the law that we know on the
24 point. To me it is a rather simple proposition, Judge.
25 The defendant doesn't take the stand and therefore his

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2 character and reputation can't be brought to the jury.

3 THE COURT: I don't quite agree with you it is
4 that simple. That, of course, is the general proposition.
5 in most criminal cases. However, here the proffered
6 testimony goes to the heart of the Government's case, and,
7 therefore, the question really could be simply put as to
8 whether or not the rule of United States vs. Bozza, United
9 States vs. Deaton, and similar cases in this Circuit
10 doesn't apply.

11 In other words, the Government here is offering
12 this proof not to show bad character on the part of Mr.
13 Eliano, but to show that it is true, as they contend, that
14 he was not just a hair dresser or a beautician, he was
15 a pimp, and that there was a substantial income which he
16 didn't pay a tax upon, and that he did this openly and
17 knowingly and so on.

18 So the question really which the Trial Judge
19 has to decide is: Is it sufficiently germane in that
20 regard to become admissible? And I think it is.

21 Also, I might point out, really all the prejudice
22 which might be attached to this is already in the case in
23 any event by virtue of the testimony of the Government
24 witnesses so far. We have already heard, in quite vivid
25 detail, from two witnesses in the case who, if they are

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2 believed, establish beyond a doubt that the defendant was
3 achieving substantial income by his pimping activities.

4 MR. KAPLAN: Your Honor, on the question of
5 prejudice, I would say that by permitting evidence of a
6 prior plea, the prejudice becomes much greater, and I
7 think the prejudice is of a different sort than merely
8 witnesses on a direct case that are subject to, of course,
9 cross examination as to the believability. In effect,
10 your Honor --

11 THE COURT: No, I am going to instruct the jury
12 on the point and I am going to allow this. There's
13 another reason. The Government's in the position of
14 calling two ladies, let's say, who were perhaps vulnerable
15 from the credibility point. And I think the Government
16 in its direct case is entitled to buttress that evidence
17 by admissions in effect of the defendant himself.

18 So exception to Mr. Eliano. I will allow the
19 lady from the courthouse to testify as to the minutes of
20 the plea, but I hope that Count 4 is here. I would like
21 to see that. Count 2.

22 MR. PADGETT: Your Honor, I have an Assistant
23 District Attorney from the New York County District
24 Attorney's office with the D.A.'s copy of the indictment,
25 and I have the Clerk of the Court who will testify that

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2 their copy, which is the original, is unavailable at this
3 time. The D.A. will testify that it is the practice to
4 maintain duplicate copies in the D.A.'s file.

5 THE COURT: You are not going to make any
6 objection to these technical problems, are you? Do you
7 want him to go through all this? Mr. Kaplan?

8 MR. KAPLAN: Speaking of the Assistant, your
9 Honor? The District Attorney's --

10 THE COURT: Yes.

11 MR. KAPLAN: No, I would not think so, your
12 Honor.

13 THE COURT: I don't see why we have to waste all
14 our time on that. I understand your objection to the
15 main evidentiary point, and I respect that, but, I mean,
16 going through all this technical proof, can't we just agree
17 that the D.A. would testify that is a true copy and that
18 the Clerk's Office over there will testify they can't
19 find the original?

20 MR. PADGETT: I certainly would.

21 THE COURT: Unless you have some doubt about
22 this, Mr. Kaplan, in which case, of course --

23 MR. KAPLAN: Well, your Honor, it is not, of
24 course, the doubt that I may have and obviously I am sure
25 that there was such an indictment and it probably contained

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2 the count that we are speaking about. May I further say,
3 your Honor, insofar as producing, again going to the
4 introduction of the evidence, may I further say, your
5 Honor, that if his plea was in effect an admission against
6 his interest, then I would think, your Honor, that Miranda
7 might even play a part in it.

8 THE COURT: Sorry, I don't agree with that. I
9 can certainly see your point that in a sense it is an
10 admission against interest, but, on the other hand, it is
11 very much an admission for interest, let's be realistic
12 as to what goes on in the courts of this state and other
13 states. This was a plea bargain.

14 MR. PADGETT: It certainly was, your Honor.

15 THE COURT: We know that. I am sorry, Mr.
16 Kaplan. That is an ingenious argument for which I give
17 you credit for ingenuity, but I don't admit to being
18 persuaded.

19 Exception to your client.

20 MR. PADGETT: Your Honor, there's one housekeep-
21 ing detail which I might take care of now.

22 THE COURT: The jury is coming in. Do we have to?

23 MR. PADGETT: I think we would save time. It
24 is my understanding, as Mr. Kaplan has indicated to me,
25 he will call two witnesses on the defense.

1 dhkm

2 THE COURT: Let's get through with the
3 Government's case and then we will worry about the defense.

4 MR. PADGETT: Very well, your Honor.

5 (In open court.)

6 (Jury present.)

7 THE COURT: Good morning, ladies and gentlemen.
8 Now we are finally all assembled and I think we are ready
9 with a new witness.

10 MR. PADGETT: The Government calls Bryan Barrett
11 to the stand.

12 - - -

13 B R Y A N B A R R E T T , called as a witness by the
14 Government, being furst duly sworn, testified
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. PADGETT:

18 Q Mr. Barrett, by whom are you employed?

19 A By the District Attorney's Office in the County
20 of New York

21 Q In what capacity?

22 A Deputy Chief, Indictment Bureau.

23 Q As such, are you familiar with the records
24 maintained by the New York County District Attorney's
25 Office?

1 dhkm

Barrett-direct

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2 A Yes, I am.

3 Q In particular, are you familiar with the record
4 keeping procedures of the Indictment Bureau of the New
5 York County District Attorney's Office?

6 A Yes, I am.

7 Q For how long have you been employed by the New
8 York County District Attorney's Office?

9 A I have been employed since August 14, 1972.

10 Q Can you tell us what the practice of the District
11 Attorney's Office is with respect to the preparation of
12 indictments.13 A Yes. We have a staff of several typist-clerks
14 who are given instructions as to the type of charges and
15 the language to be contained in the charges, and they
16 prepare from those instructions an original copy of an
17 indictment and three carbon copies of the same indictment.

18 Q Can you tell us what happens to the original?

19 A The original copy is filed in the arraignment
20 Part in the Supreme Court, County of New York.21 Q Is that copy then used by the Court from all
22 appearances of the matter on the calendar?

23 A Yes, it is.

24 Q Can you tell us what happens to the carbon copies?

25 A All right. The carbon copies are given out in the

1 dhkm Barrett-direct 422
2 following manner: One copy is retained in the Assistant
3 District Attorney's file to be used for his purposes in
4 preparing the case for trial. One copy is served on each
5 defendant, and an additional copy, if necessary, is given
6 to the Criminal Court of the Supreme Court of New York for
7 their purposes.

8 Q Did you have occasion today to go to the files
9 of the New York County District Attorney's Office?

10 A Yes, I did.

11 Q Did you withdraw a certain case folder from
12 those files?

13 A Yes, I did.

14 Q Did you search that case folder to determine
15 whether or not a carbon copy such as the one you have just
16 described was contained therein?

17 A I did.

18 Q Was that a carbon copy of Indictment No. 3507
19 of 1971?

20 A Yes, it was.

21 Q Is that the indictment of the People of the State
22 of New York against Frank Eliano?

23 A Yes, it is.

24 Q May we see that carbon copy of the indictment,
25 please? (Handing.)

1 || dhkm

Barrett-direct

423

2 (Government's Exhibit 17 marked for
3 identification.)

4 Q I show you Government's 17 for identification.

5 Is that the carbon copy which you removed from the District
6 Attorney's files today?

7 A Yes, it is.

8 Q That is Indictment 3507 of 1971?

9 A That is correct.

10 9 Thank you

11 MR. KAPLAN: Your Honor, I, of course, have a
12 standing objection to all of this.

13 THE COURT: Yes, your client has a standing
14 objection to all of this.

15 MR. KAPLAN: And a motion to strike.

16 Q Mr. Barrett, there is a notation in pen on that
17 indictment. Without reading it, can you tell us what
18 that notation means?

19 A That notation is a notation in pen that is --
20 a writing that was added subsequent to the typing of this
21 particular carbon copy. I would not know, of course, who
22 wrote the notation. Do you want to know what it means?

23 Q Yes.

24 A Without stating what --

25 Q Does it mean that a plea was entered?

1 dhkm

Barrett-direct

424

2 A It doesn't mean that a plea was entered, it
3 tends to indicate that there was a plea entered. It
4 tends to indicate that somebody wrote this down to reflect
5 that there was a plea of guilty under that charge.

6 Q I see. Without telling us the substance of
7 the charge, can you tell us which count of the indictment
8 that was?

9 A The second count.

10 MR. PADGETT: May I have just a moment, your
11 Honor?

12 At this time I would offer Government's 17 in
13 evidence.

14 MR. KAPLAN: For the reasons stated prior, I
15 object.

16 THE COURT: Yes. As I have heretofore ruled, the
17 objection is overruled and the proffered exhibit will be
18 received. At least, however, it should be noted, Mr.
19 Padgett, that we are only receiving this as to the caption
20 in Count 2.

21 MR. PADGETT: That is correct.

22 THE COURT: That is all you are really offering
23 it for, anyway.

24 MR. PADGETT: That's right.

25 THE COURT: All right.

1 dhkm

Barrett-direct

425

2 (Government's Exhibit 17 received
3 in evidence.)

4 Q Mr. Barrett, would you read the caption and the
5 second count of that indictment.

6 A Yes. The Indictment "People of the State of
7 New York against Frank Eliano.

8 "Second count, and the grand jury aforesaid by
9 this indictment further accuses said defendant of the
10 crime of promoting prostitution in the first degree,
11 committed as follows: Said defendant in the County of New
12 York on or about February 15, 1969, advanced prostitution
13 by compelling Sandra Marchand, by force and intimidation,
14 to engage in prostitution."

15 MR. PADGETT: I have no further questions of
16 this witness.

17 MR. KAPLAN: No questions.

18 THE COURT: Thank you, Mr. Barrett. You may
19 be excused.

20 (Witness excused.)

21 MR. PADGETT: Your Honor, could I have the
22 Court's indulgence for about thirty seconds, please?

23 MB. KAPLAN: Your Honor --

24 MR. PADGETT: Your Honor, I apologize to the
25 Court. I am going to have to call a witness out of

(This page left blank intentionally)

1 dhkm

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2 MR. PADGETT: The Government calls Arlyne Segal
3 to the stand.

4 - - -

5 A R L Y N E S E G A L , resumed.

6 THE CLERK: May I remind you that you are still
7 under oath.

8 MR. KAPLAN: Your Honor, may I ask, as the record
9 indicated previously, may I have a standing objection.

10 THE COURT: Yes, your client has a continuing
11 objection to this, however, the Court's ruling which I
12 made earlier this morning will stand.

13
14 DIRECT EXAMINATION CONTINUED

15 BY MR. PADGETT:

16 Q Miss Segal, you told us yesterday, but just tell
17 us briefly again, how are you employed?

18 A I am a court reporter in the New York Supreme
19 Court, Criminal Term.

20 Q Tell us very briefly, what do your duties entail?

21 A My duties entail taking a verbatim record in the
22 courtroom and transcribing it.

23 Q Now, were you so employed on May 31, 1972?

24 A Yes, I was.

25 Q In particular, were you employed in that capacity

1 dhkm

Segal-direct

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2 in Part 41 of the New York County Supreme Court?

3 A Yes, I was.

4 Q Did you take any transcription of proceedings
5 in the matter of the People of the State of New York vs.
6 Frank Eliano, Indictment 3507 of 1971?

7 A Yes, I did.

8 Q Now, will you read to us what you transcribed
9 that day?

10 A Certainly.

11 "Mr. McGillicutty: If your Honor please, the
12 defendant Frank Eliano, under indictment No. 3507 of 1971,
13 requests permission to withdraw his heretofore entered
14 plea of not guilty under the second count of the subject
15 indictment to the crime of attempt to promote prostitution
16 in the second degree as a Class E felony, and that plea is
17 to cover -- to satisfy the entire indictment.18 "The Court: Frank Eliano, did you understand
19 what Mr. McGillicutty said?20 "(Thereupon the defendant nods yes. There was
21 no oral response.)22 "The Court: By your plea of guilty, you are
23 admitting your guilt to the crime of attempt to promote
24 prostitution, which is a felony; do you understand that?

25 "The Defendant: Yes, sir.

1 dhkm

Segal-direct-cross

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2 "The Court: And do you understand that you are
3 admitting your guilt, you are pleading guilty?"

4 "The Defendant: Yes."

5 MR. PADGETT: Thank you. No further questions.

6 - - -

7 CROSS EXAMINATION

8 BY MR. KAPLAN:

9 Q Is that the end, Mrs. Segal?

10 A There's just a little more colloquy in here.

11 Q How much more?

12 A Actually it is just the arraignment where the
13 Clerk says "Do you withdraw your heretofore entered plea."

14 Q You didn't read the entire minutes of that
15 occasion, did you, your entire minutes, you have some
16 left over?

17 A Yes, I have a few things left over.

18 MR. KAPLAN: With your Honor's permission, just
19 one moment.

20 Q Miss Segal, you say that the remainder of your
21 minutes there concern the arraignment; is that what you
22 say?

23 A Yes.

24 MR. PADGETT: Your Honor, I will be happy to
25 advise Mr. Kaplan privately what is on there, and perhaps

1 dhkm Segal-cro: s 488

2 I can save some time.

3 MR. KAPLAN: Maybe that will save some time,

4 Judge. Thank you.

5 Q Would you read the rest, please.

6 A Sure.

7 Q Excuse me. I see Mr. --

8 MR. KAPLAN: May I have a moment? Just one more
9 moment, if your Honor please.10 Q Would you continue reading to the very end,
11 please?

12 A Sure.

13 Q Thank you.

14 A "The Court: Would you give me that indictment
15 number?16 "Mr. McGillicutty: We have INdictment No. 3507
17 of 1971.

18 "The Clerk: Is that your true name?

19 "The Defendant: It is.

20 "The Clerk: All right. Do you now -- Frank
21 Eliano, do you now withdraw your heretofore entered plea
22 of not guilty and do you now plead guilty to the crime of
23 an attempt to promote prostitution in the second degree
24 as a Class E felony?

25 "The Defendant: Yes, sir.

1 dhkm

Segal-cross

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2 "The Clerk: Is Frank Eliano your true name?

3 "The Defendant: Yes.

4 "(Thereupon the defendant's pedigree is taken.)

5 "The Clerk: Date for sentence, your Honor?

6 "The Court: June 30.

7 "The Clerk: The 30th of June.

8 "Mr. McGillicutty: Bail continued?

9 "The Court: Bail continued."

10 - - -

11 Q Miss Segal, do you have minutes subsequent to
12 those minutes concerning the sentence itself?

13 A No, I have nothing concerning the sentence.

14 Q You were not present on that occasion?

15 A No, sir, I was not.

16 Q And there's nothing more concerning Mr. Eliano
17 on those minutes?18 A There is, you know, the statement by the District
19 Attorney about the sentence, but not his actual sentence --
20 about his recommendation.

21 Q What did the District Attorney say?

22 MR. PADGETT: Your Honor, I really must object.

23 I think this is irrelevant to the point at issue.

24 THE COURT: I would agree. Sustained.

25 MR. KAPLAN: No further questions, your Honor.

1 dhkm

Segal-cross

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2 THE COURT: Thank you, Miss Segal. You may be
3 excused.

4 THE WITNESS: Thank you, your Honor.

5 (Witness excused.)

6 MR. PADGETT: That is the Government's case,
7 your Honor.

8 THE COURT: All right. Ladies and gentlemen of
9 the jury, I am going to ask you to go out to luncheon now
10 and return at a minute or two before two o'clock, at which
11 point we will turn to the defense's case and then hopefully
12 we will get to the closing arguments and the Court's charge.

13 So see you at two o'clock. Counsel please remain.

14 (Jury excused.)

15 MR. KAPLAN: Would your Honor entertain a motion?

16 THE COURT: That is precisely what I will do.

17 MR. KAPLAN: Your Honor, if that is the conclusion
18 of the Government's case, the defendant, Mr. Eliano, res-
19 pectively moves the Court for a judgment of acquittal on
20 the grounds that the Government's case as presented did not
21 contain a prima facie case as within the purvue of the
22 indictment, that is, the intent that is required and the
23 counts of the indictment were not proven, your Honor,
24 beyond a reasonable doubt. No prima facie case has been
25 forthcoming, Judge.

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1 dhkm

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2 Honor. Aside from omitting the word presents, if the
3 jury found as a matter of fact from the evidence that
4 Sandra supported the defendant, although she made the
5 money, she kept it.

6 THE COURT: Although she made the money she
7 kept it?

8 MR. KAPLAN: Right, she didn't turn the money
9 over, but that she supported the defendant without the
10 word presents, merely supported him. Now, surely they
11 could have gleaned that from the evidence she gave.

12 THE COURT: I am not sure they could have at all.
13 She didn't say any such thing.

14 MR. KAPLAN: I don't know whether she said it
15 or not. But the totality of her testimony was such that
16 possibly a jury or two or three could have gleaned that
17 she supported the defendant as a man supports his wife.
18 If she in fact did have money that the money --

19 THE COURT: I refuse to charge any further than
20 I did.

21 MR. KAPLAN: I respectfully except, your Honor.

22 (Recess.)

23 (Note from jury -- 6:00 p.m.)

24 (Court's Exhibit 3 marked.)

25

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2 (Jury not present.)

3 THE COURT: Gentlemen, this last note reads
4 as follows:5 "May we have exact wording of indictment to
6 which Eliano pleaded guilty, New York Supreme Court.
7 Thereafter the decision may be reached almost at once."8 Now, I had thought that we had Count 2 in
9 evidence.10 MR. PADGETT: It was submitted, your Honor, to
11 the jury.

12 THE COURT: Right.

13 MR. PADGETT: I think it is Government's --

14 THE COURT: May I have the last note? Court's
15 Exhibit 2?16 Gentlemen, I am wondering if I and you didn't
17 misconstrue the thrust of the earlier note. "If the
18 relationship between Sandra and Frank was one of 'friendly
19 living together' and she was merely supporting him."20 MR. KAPLAN: That is why I suggested, your Honor,
21 the relationship of just a gigolo, a boy friend -- girl
22 friend. The gift came in after, your Honor. The possibil-
23 ity of a gift.24 THE COURT: You said something about the gift.
25 That is where I think I went off in misconceiving what

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2 they were about.

3 MR. KAPLAN: I had mentioned very clearly that
4 that note to me indicated the relationship that I
5 indicated twice, that they wanted to know whether they
6 were living together as one who was supporting a gigolo.
7 I can't think of a better word.

8 THE COURT: I don't mean to argue with you in
9 terms of your semantics, Mr. Kaplan, I am only saying that
10 I may have been confused as to the real intent.

11 MR. PADGETT: Your Honor, reading the second
12 note in light of the third note, I think the third note
13 speaks to the count of the indictment which talks about
14 the forceable prostitution of Sandra Marchand, which would
15 go towards the relationship.

16 MR. KAPLAN: There are only two notes.

17 THE COURT: I understand. Look, gentlemen, I
18 didn't intend to get into an argument with either one of
19 you.

20 Let me go back as to the last note, the third
21 note. Am I correct they should have that in the jury room?

22 MR. PADGETT: They have that, your Honor, I
23 think it is 17 or 18, I forget. It is there.

24 MR. KAPLAN: Would your Honor reconsider your
25 further charge in light of what your Honor now believes

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2 to be --

3 THE COURT: Would you like me to?

4 MR. KAPLAN: I certainly would, Judge.

5 THE COURT: All right.

6 (Jury present.)

7 THE COURT: Ladies and gentlemen, I have your
8 last note. My understanding of your note leads me to say
9 that you already have the answer to this in your possession.
10 You have, I believe, or you should have, Government's 17,
11 which is a copy of the indictment in New York County
12 Supreme Court, and specifically the only count which is
13 relevant is Count 2. That is the count in the indictment.
14 You say you don't have it?

15 JUROR NO. 5: We couldn't seem to locate it,
16 your Honor, we could go back and look.

17 THE COURT: The Government counsel put it in
18 his pile of exhibits. I believe you should have it.

19 MR. KAPLAN: Your Honor, was the entire exhibit
20 received?

21 THE COURT: Please, Mr. Kaplan, you apparently
22 don't listen to me very frequently at all. I just got
23 through explaining that the part of this indictment which
24 is in evidence, the only relevant part, is Count 2, right?

25 MR. KAPLAN: I heard that, Judge, I heard that

1 dhkm

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2 but I just wanted to know physically, your Honor, whether
3 the entire thing was presented.

4 THE COURT: I don't believe that it was. But
5 what I am trying to say is, Mr. Kaplan, without any
6 further interruptions from you, Count 2 is the only count
7 or portion that is relevant, and I assume that is the only
8 portion the jury has.

9 MR. PADGETT: Your Honor, perhaps we could settle
10 it by having the reporter read back the reading that the
11 Assistant District Attorney made this morning of that
12 portion so there will be no problems. Would that be
13 possible, Mr. Reporter?

14 MR. KAPLAN: Forgive me, Judge, it is late and
15 I know, but I must ask this: I still don't know whether
16 the numbered exhibit was physically the entire indictment.

17 THE COURT: Mr. Kaplan, you and Mr. Padgett
18 control the exhibits. I gave you a chance to check each
19 other. You said you had no problem and the exhibits
20 went in. I wish you would not argue that, because we are
21 focusing on something else and I repeated to the jury, and
22 I am sure they understand, that they are not to look at
23 anything else even assuming something else is in there.

24 MR. KAPLAN: Very good, Judge.

25 THE COURT: But in any event, I am going to adopt

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2 the suggestion your adversary just made so as to remove
3 any doubt, and I would ask you to just subside, because I
4 am very aware of what you are trying to tell me, sir,
5 please.

6 MR. KAPLAN: Yes, your Honor.

7 (Pause.)

8 THE COURT: Now, Mr. Kaplan, you are right.
9 Your concerns, as it turns out, Mr. Kaplan, are justified.
10 The marshal did find the exhibit 17 and the entire
11 indictment is in there, including counts which are not
12 relevant. However, I see no prejudice to your client
13 because, as you know, the jury has reported that they
14 were not able to find it. But since the marshals have,
15 I will take care of that now by reading to the jury the
16 relevant portion of this indictment.

17 The caption is, ladies and gentlemen, "The
18 People of the State of New York against Frank Eliano,
19 Defendant." Count 2 reads as follows: "And the grand jury
20 aforesaid by this indictment further accuses said defendant
21 of the crime of promoting prostitution," to which, as I
22 recall the evidence, the plea was taken to a Class E
23 felony in this promoting prostitution in the second degree,
24 committed as follows, and I quote, "Said defendant in the
25 County of New York on or about February 15, 1969, advanced

1 dhkm

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2 prostitution by compelling Sandra Marchand, by force and
3 intimidation, to engage in prostitution."

4 Now, while you are here, ladies and gentlemen,
5 I am still concerned about the possibility that I really
6 misunderstood the thrust of your earlier note. Do you
7 remember, that is the one "If the relationship between
8 Sandra and Frank was one of 'friendly living together' and
9 she was merely supporting him rather than working for him,
10 would this be reportable income to Eliano?"

11 I mentioned something in my instructions when
12 trying to answer you about gifts, and I am afraid that I
13 am guilty of perhaps misunderstandin-. Even though you
14 were nice enough to say that you thought I had answered
15 you, I am still sufficiently concerned to take another
16 tack and I am going to ask you to disregard what I said
17 earlier, and consider this: If you were to determine that
18 the evidence showed here that what went on was only that
19 Sandra and Eliano were living together and that she was
20 the person earning income, and that she controlled that
21 money or income, and used part of it to support him, why,
22 then you would be entitled to find that this was reportable
23 income or taxable income to her.

24 Now, it is important that I emphasize, if you
25 were to find that the facts established are to your

1 dhkm

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2 satisfaction and that this was all that was going on, why,
3 then I would instruct you that if she was getting the
4 money, she was controlling it basically and that she was
5 simply supporting him in their common apartment or home or
6 whatever it is at a given time, and using the money to
7 support him as well as herself, but that she was the
8 true income earner or the head of the household, so to
9 speak, then you would be entitled to find that this was
10 taxable income to her, and not to Eliano, that is, that
11 is, taxable income to Sandra Marchand and not to Frank
12 Eliano.

13 Now, if you will accept that as the answer to the
14 earlier note and forget what I said earlier, I think, from
15 what I can see now and thinking about it, that is perhaps
16 closer to what you were seeking, is it not?

17 THE FOREMAN: Yes.

18 THE COURT: Well, I see you nodding your heads.
19 If there is anybody who disagrees, please don't hesitate
20 to speak up. All right.

21 Now, what is your pleasure, would you like to
22 go back and see if you could reach a verdict?

23 JURORS: Yes, your Honor.

24 THE COURT: Very good.

25 (The jury retired to further deliberate.)

1 dhkm

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2 THE COURT: Mr. Kaplan, let me say to you and
3 your client that I have instructed the Clerk to hold on
4 to Government's 17 so that there will be none of the
5 prejudice that you were concerned about.

6 MR. KAPLAN: Your Honor, for the record, may I
7 move for the withdrawal of a jury in view of the fact
8 that Government's 17 in fact was in the jury room and the
9 exhibit, of course, was --

10 THE COURT: Mr. Kaplan, the whole purpose of
11 what I just ruled on earlier was just a hundred eighty
12 degrees to the opposite. The fact is the jury came in
13 this room and told us flatly that they had not been able
14 to find it. Their note asked for it.

15 While they were here in your presence and that
16 of your client and of Government counsel the Court, in
17 your presence, asked the marshals to locate the exhibit,
18 which they did. I then read, in your presence and in your
19 client's presence, the count, with suitable editorializing
20 so as not to confer any possible prejudice on your client.

21 Therefore, your request is absolutely and flatly
22 denied.

23 MR. KAPLAN: I respectfully except.

24 MR. PADGETT: Might I point out for the record
25 that all exhibits, defense and Government exhibits, were

1 dhkm

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2 inspected by each of the counsel prior to submission, and
3 there appeared to be no objection to the submission of any
4 of the exhibits.

5 THE COURT: I have already observed that. That
6 is what I thought, too, was done in my presence and I
7 certainly believe that was our intention. But in any event,
8 the fact is even assuming that was not done, there was no
9 prejudice to Mr. Eliano because the jury could not find
10 the exhibit. And the Court got the exhibit and read it
11 to them in open court.

12 So there is absolutely no basis in fact or law
13 for granting a motion to withdraw a jury. Exception to
14 your client, Frank Eliano.

15 MR. KAPLAN: Thank you, your Honor. May I say
16 I didn't see that exhibit. Whether I should have or not
17 is another story.

18 THE COURT: I don't mean to criticize you.

19 THE DEFENDANT: Your Honor, may I be allowed to
20 say one thing at this point? One sentence? Please?
21 Please?

22 I would like to represent my lawyer right at
23 this particular moment and just say one sentence.

24 THE COURT: Why don't you speak to Mr. Kaplan.
25 Find out.

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U.S. DISTRICT COURT

JAN 28 9 51 AM '75

50

United States District Court for
SOUTHERN DISTRICT OF NEW YORK

United States of America vs.

DEFENDANT

FRANK ELIANO

DOCKET NO. 74 Crim 267

JUDGEMENT AND PROBATION/COMMITTMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
Jan. 10, 1975

COUNSEL

WITHOUT COUNSEL. However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

KENNETH KAPLAN

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that
there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTY

NOT GUILTY. Defendant is discharged

There being a finding/verdict of GUILTY.

JUDGMENT &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar years 1968, 1969 and 1970, and failing to file Federal Income Tax return for the calendar year 1970. (Title 26, United States Code, Sections 7201 and 7203)**

JUDGMENT
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

THREE (3) YEARS on each of counts 1, 2 and 3 to be served concurrently with each other. SIX (6) MONTHS on count 4 to run consecutively of Counts 1, 2 and 3. It is furthered ordered that the Defendant be committed to an institution to determine if a medical problem exists and undergo psychiatric consultations if deemed necessary.

COMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

ONLY COPY AVAILABLE

CERTIFIED AS A TRUE COPY ON

DATE 1/15/75

BY P. T. G. [Signature]

NEED BY

U.S. District Judge

U.S. Magistrate

001-75

MARSHAL R. TYLER, JR., U.S.D.J.

GENERAL
CONDITIONS
OF
PROBATION

Where probation has been ordered the defendant shall, during the period of probation, conduct himself as a law-abiding, industrious citizen and observe all conditions of probation prescribed by the court. **TO THE DEFENDANT - You shall:**
(1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;
(2) associate only with law-abiding persons and maintain reasonable hours;
(3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);
(4) not leave the judicial district without permission of the probation officer;
(5) notify your probation officer immediately of any change in your place of residence;
(6) follow the probation officer's instructions and report as directed.

The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

Defendant committed 10-3-74

following arrest; is not released
on bail.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on 10-10-73 to WARDEN, FEDERAL DETENTION HQRSTS., NEW YORK, N. Y. FOR SERVICE OF SENTENCE AT THAT INSTITUTION, OR FOR TRANSPORTATION TO ANOTHER INSTITUTION DESIGNATED BY ATTORNEY GENERAL, BY PRISON VAN

Defendant noted appeal on _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on _____ to _____

at _____, the institution designated by the Attorney General, with a certified copy of the within Judgment and Commitment.

United States Marshal,

By _____

Deputy Marshal,

THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LHAT

THE PEOPLE OF THE STATE OF NEW YORK,

— against —

FRANK ELIANG,

Defendant

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuse the
defendant **PROMOTING PROSTITUTION IN THE FIRST DEGREE**, committed
as follows:

from

The defendant, in the County of New York, on or about March 18, 1968 to on or about October 22, 1970, advanced prostitution by compelling Janira Marchand by force and intimidation to engage in prostitution.

SECOND COURT

AND THE GRAND JURY AFORESAID, by this indictment further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE STATE OF NEW YORK,
committed as follows:

Said defendant, in the County of New York, on or about February 19, 1969, advanced prostitution by compelling Sandra Marchand by force and intimidation to engage in prostitution. 1101

THIRD COUNTS

AND THE RAND JURY AFORESAID, by this ~~same~~ indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE SECOND DEGREE, committed as follows:

said defendant, in the County of New York, ^{from} on or about January 1, 1969 to on or about July 28, 1969, advanced and profited from prostitution by managing, supervising, controlling and owning, ██████████ ██████████ a prostitution business and enterprise involving prostitution activity by two prostitutes.

FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, on or about February ~~the~~ 15, 1969, advanced and profited from prostitution by managing, supervising, controlling and owning, ~~██████████~~ a prostitution business and enterprise involving prostitution activity by two prostitutes.

FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, from on or about January 1, 1969 to on or about July 28, 1969, advanced prostitution b. compelling Frances Bak by force and intimidation to engage in prostitution.

SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, from on or about January 1, 1969 to on or about July 28, 1969, knowingly advanced and profited from prostitution of a person less than nineteen years old, to wit, Frances Bal. SEVENTH COUNT:

DEVANTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE FIRST DEGREE, ~~CRIMES~~ committed as follows:

Said defendant, in the County of New York, ~~XXXX~~ on ~~XXXXX~~ or about
February 15, 1969, advanced prostitution by compelling Frances Bak by
force and intimidation to engage in prostitution.

EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about March 12, 1979, advanced prostitution by compelling Sandra Marchand by force and intimidation to engage in prostitution.

THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, on or about February 15, 1969, knowingly advanced and profited from prostitution of a person less than nineteen years old, to wit, Frances Bak.

EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PROMOTING PROSTITUTION IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, ~~from on or about January~~ ^{March} 12, 1969 ~~to~~ ~~on or about January 12, 1969~~ advanced and profited from prostitution by managing, supervising, controlling and owning, ~~one~~ ~~a prostitution business and enterprise involving prostitution activity by two prostitutes.~~

ELVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of AN ATTEMPT TO COMMIT THE CRIME OF PROMOTING PROSTITUTION IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, from on or about September 27, 1970 to October 12, 1970, attempted to advance and profit from prostitution by managing, supervising, controlling and owning, ~~one~~ ~~a prostitution business and enterprise involving prostitution activity by two and more prostitutes.~~

recklessly engaged in conduct which created a grave risk of death to another person, to wit, Frances Bak.

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ELEVENTH

TWELFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of AN ATTEMPT TO COMMIT THE CRIME OF COERCION IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about April 11, 1971, attempted to ~~cause~~ compel and induce Sandra Marchand ^{to abstain from engaging} in conduct which said Sandra Marchand had a legal right to engage, by means of instilling in said Sandra Marchand a fear that, if the demand were not complied with, said defendant would cause physical injury to Sandra Marchand.

THIRTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of AN ATTEMPT TO COMMIT THE CRIME OF COERCION IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about April 11, 1971, attempted to compel and induce Debbie Smith to abstain from engaging in conduct which said Debbie Smith had a legal right to engage, by means of instilling in said Debbie Smith a fear that, if the demand were not complied with, said defendant would cause physical injury to Debbie Smith.

FOURTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of RECKLESS ENDANGERMENT IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 1, 1969, under circumstances evincing a depraved indifference to human life, recklessly engaged in conduct which created a grave risk of death to another person, to wit, Frances Bak.

defendant of the crime of A BSLT IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 15, 1969 with intent to cause serious physical ~~injury~~ to another person, caused such injury to Frances Bak, ~~by striking her with a dangerous instrument, to wit, a pistol.~~ ~~XXXXXXXXXXXXXXXXXXXXXX~~

SIXTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of ASSAULT IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 15, 1969 with intent to cause physical injury to another person, caused such injury to Frances Bak, ~~by striking her with a dangerous instrument, to wit, a pistol.~~ ~~XXXXXXXXXXXXXXXXXXXXXX~~

SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of OBSCENING A PERSON, committed as follows:

Said defendant, in the County of New York, on or about September 15, 1969 carried and possessed a pistol with intent to use the same unlawfully against another.

EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of ASSAULT IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 27, 1970, with intent to cause physical injury to another person, caused such injury to Sandra Marchand by means of ~~XXXXXXXXXXXXXX~~ ~~using that instrument, to wit, a metal ashtray.~~

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of POSSESSING A WEAPON, DANGEROUS INSTRUMENT AND APPLIANCE, committed as follows:

Said defendant, in the County of New York, on or about September 27, 1970^{to or about September 28, 1970}/carried and possessed a metal ashtray with intent to use the ~~same~~ same unlawfully against another.

TWENTIETH COUNT:

~~SEXUAL ASSAULT~~

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of BODILY IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 27, 1970 engaged in deviate sexual intercourse with Sandra Marchand by forcible compulsion.

TWENTY FIRST COUNT:

~~SEXUAL ASSAULT~~

AND THE GRAND JURY AFORESAID, by this ~~X~~ indictment, further accuse said defendant of the crime of SEXUAL ABUSE IN THE FIRST DEGREE, committed as follows:

Said defendant, ~~INXAS/E/~~ in the County of New York, on or about September 28, 1970 subjected Sandra Marchand to sexual contact by forcible compulsion.

~~SEXUAL ASSAULT~~

TWENTY SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of SEXUAL MISCONDUCT, committed as follows:

Said defendant, in the County of New York, on or about September 27, 1970 engaged in deviate sexual intercourse with Sandra Marchand, without the latter's consent.

TWENTY THIRD COUNT:

~~SEXUAL ASSAULT~~

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of BODILY IN THE FIRST DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 27, 1970^{Intercourse} engaged in deviate sexual ~~INXAS/E/~~ with Debbie Smith by forcible compulsion.

TWENTY FOURTH COUNT:
TWENTY FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of SEXUAL ABUSE IN THE FIRST DEGREE, committed as follows:
Said defendant, in the County of New York, on or about September 27, 1970
subjected Debbie Smith to sexual contact by forcible compulsion.

TWENTY FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of SEXUAL MISCONDUCT, committed as follows:

Said defendant, in the County of New York, on or about September 27, 1970 engaged in deviate intercourse with Debbie Smith, without the ~~knowing~~,
latter's consent.

FRANK C. HIGGIN,
District Attorney

ASSAULT
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EXUAL

of the Attorney
15 Broadway - Suite

nsel

No.
3501-71

A 24-341

THE PEOPLE OF THE STATE OF NEW YORK

d / day of
July 1971

against

ds 1/30 8/10/71 - Frank Eliano, 10

12/14/70 1300 - #20659

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INDICTMENT
PROMOTING PROSTITUTION FIRST DEGREE
PROMOTING PROSTITUTION SECOND DEGREE
ATT. PROMOTING PROSTITUTION SECOND DEGREE
ATT. COERCION FIRST DEGREE
RECKLESS ENDANGERMENT FIRST DEGREE

Penal Law 230.30, 230.25, 110.00, 135.65, 120.25, 120.05, 265.05

110.00, 110.65,
1, 10, 120.10

District Attorney

A TRUE BILL

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Foreman

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